

## **Assembly Bill No. 1767**

### **CHAPTER 349**

An act to amend Sections 17049, 18670, 19950, and 21018 of, and to add Section 19136.7 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 22, 2005. Filed with  
Secretary of State September 22, 2005.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1767, Committee on Revenue and Taxation. Franchise Tax Board: administration: collections and seizures: erroneous levies: required disclosures: claim of right.

(1) Existing law authorizes the Franchise Tax Board, as part of its administrative duties with respect to the collection of taxes, to seize assets of a delinquent taxpayer. Existing law authorizes the board to issue an order to specified financial institutions to withhold and remit liquid assets of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

This bill would require a financial institution, in compliance with an order to withhold assets, to liquidate specified noncash assets of a delinquent taxpayer, in a specified manner.

(2) Existing law authorizes a person to file a reimbursement claim against the board for bank charges assessed against that person as a result of an erroneous levy by the board.

This bill would expand this provision to include any 3rd-party fees or charges assessed against a person as a result of an erroneous levy, erroneous processing action, or erroneous collection action by the board. This bill would provide that a penalty for underpayment of tax would not apply if the underpayment is based on an erroneous levy, erroneous processing action, or erroneous collection action by the board.

(3) Existing law generally provides that all taxpayer information obtained by the board is to remain confidential. Existing law provides exceptions to this general requirement, including a provision that requires the board, upon the request of the Department of Justice, a court, or any California law enforcement agency, to provide the address of any person represented to be a person for whom there is an outstanding arrest warrant.

This bill, in compliance with existing law, would require the board, upon the request of the Department of Justice, to provide the address of a sex offender, as specified.

(4) The Personal Income Tax Law, in specified conformity to federal income tax law, provides that if a taxpayer includes an item of income in gross income because it appears that the taxpayer has an unrestricted right to that income, and the taxpayer is subsequently required to repay that

item, the taxpayer may deduct the repayment in the year the repayment is made and the taxes are to be calculated in a specified manner.

This bill would provide further conformity to federal income tax law with respect to dispositions of stock in trade and net operating losses, and by clarifying language relating to specified deductions and credits.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17049 of the Revenue and Taxation Code is amended to read:

17049. (a) If an item of income was included in the gross income of an individual for a preceding taxable year or years because it appeared that the individual had an unrestricted right to that item, a deduction is allowable for the taxable year based on the repayment of the item by the individual during the taxable year, and the amount of that deduction exceeds three thousand dollars (\$3,000), then the tax imposed by this part for the taxable year on that individual shall be the lesser of the following:

(1) The tax for the taxable year computed with that deduction.

(2) An amount equal to (A) the tax for the taxable year computed without that deduction, minus (B) the decrease in tax under this part for the preceding taxable year or years which would result solely from the exclusion of the item or portion thereof from the gross income required to be shown on the California return of that individual for the preceding taxable year or years.

(b) If the decrease in tax determined under subparagraph (B) of paragraph (2) of subdivision (a) for the preceding taxable year or years exceeds the tax imposed for the taxable year, computed without the deduction, that excess shall be considered to be a payment of tax on the last day prescribed for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

(c) Subdivision (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer, or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his or her trade or business.

(d) If the tax imposed by this part for the taxable year is the amount determined under paragraph (2) of subdivision (a), then the deduction referred to in subdivision (a) shall not be taken into account for any purpose of this part, or Part 10.2 (commencing with Section 18401), other than this section.

(e) For purposes of determining whether paragraph (1) or paragraph (2) of subdivision (a) applies, in any case where the exclusion referred to in subparagraph (B) of paragraph (2) of subdivision (a) results in a net

operating loss or capital loss for the prior taxable year, or years, that loss shall, for purposes of computing the decrease in tax for the prior taxable year, or years, under subparagraph (B) of paragraph (2) of subdivision (a), be carried over to the same extent and in the same manner as is provided under Section 17276, 17276.1, 17276.2, 17276.4, 17276.5, or 17276.7, or Section 1212 of the Internal Revenue Code, as applicable for California purposes, except that no carryover beyond the taxable year shall be taken into account.

(f) For purposes of this part, the net operating loss or capital loss described in subdivision (e) shall, after the application of paragraph (1) or (2) of subdivision (a) for the taxable year, be taken into account under Section 17276, 17276.1, 17276.2, 17276.4, 17276.5, or 17276.7, or Section 1212 of the Internal Revenue Code, as applicable for California purposes, for taxable years after the taxable year to the same extent and in the same manner as either of the following:

(A) A net operating loss sustained for the taxable year, if paragraph (1) of subdivision (a) applied.

(B) A net operating loss or capital loss sustained for the prior taxable year, or years, if paragraph (2) of subdivision (a) applied.

(g) Regulations promulgated by the Secretary of the Treasury under Section 1341 of the Internal Revenue Code shall apply, except to the extent that those regulations conflict with this section, provisions of this part, or with regulations promulgated by the Franchise Tax Board.

SEC. 2. Section 18670 of the Revenue and Taxation Code is amended to read:

18670. (a) The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an employer or person who has failed to withhold and transmit amounts due pursuant to this article, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at the times that it may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this part shall be transmitted to the Franchise Tax Board not less than 10 business days from receipt of the notice. To be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, unless another branch or office is

designated by the employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b) (1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c) (1) Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when the Franchise Tax Board, pursuant to this section or Section 18670.5, issues a levy upon, or requires by notice, any person, financial institution, or securities intermediary, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, financial institution, or securities intermediary, as defined in Section 8102 of the Commercial Code, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within 90 days of the issuance of the order to withhold. Within five days of liquidation, the person, financial institution, or securities intermediary, as applicable, shall remit to the Franchise Tax Board the proceeds of the liquidation, less any reasonable commissions or fees, or both, which are charged in the normal course of business.

(2) If the value of the financial assets to be liquidated exceeds the tax liability, the taxpayer may, within 60 days after the service of the order to withhold upon the person, financial institution, or securities intermediary, instruct the person, financial institution, or securities intermediary as to which financial assets are to be sold to satisfy the tax liability. If the taxpayer does not provide instructions for liquidation, the person, financial institution, or securities intermediary shall liquidate the financial assets in a commercially reasonable manner and in an amount sufficient to cover the tax liability, and any reasonable commissions or fees, or both, which are charged in the normal course of business, beginning with the financial assets purchased most recently.

(3) For purposes of this section, a financial asset shall include, but not be limited to, an uncertificated security, certificated security, or security entitlement as defined in Section 8102 of the Commercial Code, a security as defined in Section 8103 of the Commercial Code, or a securities account as defined in Section 8501 of the Commercial Code.

(d) Any corporation or person failing to withhold the amounts due from any taxpayer and transmit them to the Franchise Tax Board after service of the notice shall be liable for those amounts. However, in the case of a depository institution, if a notice to withhold is mailed to the branch where the account is located or principal banking office, the depository institution shall be liable for a failure to withhold only to the extent that the accounts can be identified in information normally maintained at that location in the ordinary course of business.

SEC. 3. Section 19136.7 is added to the Revenue and Taxation Code, to read:

19136.7. (a) No additions to tax shall be made under Section 19136 or 19142 with respect to any underpayment of an installment for a taxable year, to the extent that the underpayment was created or increased as the direct result of an erroneous levy, erroneous processing action, or erroneous collection action by the Franchise Tax Board.

(b) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 4. Section 19550 of the Revenue and Taxation Code is amended to read:

19550. (a) Pursuant to Section 817.5 of the Penal Code, the Franchise Tax Board, upon request from the Department of Justice, a court, or any California law enforcement agency and in a form and manner prescribed by the Franchise Tax Board, shall provide to the Department of Justice, the court, or the law enforcement agency the address of any person represented to be a person for whom there is an outstanding arrest warrant.

(b) (1) Pursuant to Section 290.9 of the Penal Code, the Franchise Tax Board shall, upon request from the Department of Justice, provide to the Department of Justice the address of any person represented to be a person who is in violation of his or her duty to register under Section 290 of the Penal Code.

(2) This subdivision shall be operative with respect to requests made on or after January 1, 2005, pursuant to Section 290.9 of the Penal Code, as added by Section 1 of Chapter 127 of the Statutes of 2004.

SEC. 5. Section 21018 of the Revenue and Taxation Code is amended to read:

21018. (a) A person may file a claim with the board for reimbursement of charges or fees imposed on the person by an unrelated business entity as the direct result of an erroneous levy, erroneous processing action, or erroneous collection action by the board. Charges that may be reimbursed include an unrelated business entity's usual and customary charge for complying with the levy instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy,

erroneous processing action, or erroneous collection action and are paid by the person and not waived by the unrelated business entity or otherwise reimbursed. Each claimant applying for reimbursement shall file a claim with the board which shall be in such form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that all of the following conditions have been satisfied:

(1) The erroneous levy, erroneous processing action, or erroneous collection action was caused by an error made by the board.

(2) Prior to the erroneous levy, erroneous processing action, or erroneous collection action, the person responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the person's position. This provision may be waived by the board for reasonable cause.

(3) The charge or fee has not been waived by the unrelated business entity or otherwise reimbursed.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the erroneous levy, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies a claim, the claimant shall be notified in writing of the reason or reasons for the denial of the claim. The board may extend the period for filing a claim under this section.

(c) Charges and fees that may be reimbursed under the authority of this section are limited to the usual and customary charges and fees imposed by a business entity in the ordinary course of business.